

REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully requested.

Claims 1 - 22 are currently pending in the application. No claim has been allowed.

By the present amendment, claims 1, 10, and 18 have been amended.

In the office action mailed March 6, 2007, claims 1, 3 - 5, and 7 - 9 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,951,658 to Morgan et al.; claims 1, 2, 7 - 10, 15, and 18 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,320,094 to Arnold; claims 3 - 6, 11 - 14, 16, and 17 were rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold in view of Morgan et al.; and claim 18 was rejected under 35 U.S.C. 103(a) as being unpatentable over Micchia et al. in view of Arnold.

The foregoing rejections are traversed by the instant response.

With respect to the rejection of claims 1, 3 - 5 and 7 - 9 on anticipation grounds over Morgan et al., it should be appreciated that the Morgan et al. patent relates to an eye patch which completely covers the user's eye and not to a sports vision training device. The Morgan et al. eye patch completely blocks the user's vision in all directions.

Claim 1 clearly states: "said piece of material being positioned beneath an individual's eye without said piece of material covering any portion of said eye so that said piece of material interferes with said individual's ability to look at said sporting object while attempting to control said sporting object due to said thickness while said piece of material allows said individual to look forward and up without any vision obstruction." It is submitted that the Morgan et al. eye patch is incapable of meeting this limitation and therefore Morgan et al. can not anticipate claim 1. To suggest that an eye patch which completely covers an eye for the express purpose of blocking vision allows an individual to look forward and up without any vision obstruction defies logic. It is submitted that the Examiner is clearly wrong when she takes the position that claim 1 does not prohibit complete blocking of an individual's vision using the device. It does. The fact that a user of the Morgan eye patch can see out of another eye is irrelevant. Claim 1 is specific to the eye under which the piece of material is positioned.

With regard to the Examiner's comment on page 2 about paragraph 0001 of the specification, it should be noted that what is said is that the piece of material in some cases will completely restrict the individual's field of vision with regard to the sports object being controlled. Nowhere does the specification say that the piece of material completely restricts all of the individual's vision.

The restriction pointed to by the Examiner is limited to the sports object. Thus, the Examiner's contention that it is reasonable and consistent with the specification to interpret claim 1 as encompassing a device which completely blocks the user's vision is based on a misinterpretation of the specification by the Examiner.

With respect to the so-called added functional limitation that the Examiner contends does not further limit the structure of the claimed invention, it is incumbent on the Examiner to consider all of the words of the specification. It is submitted that where a structure in a prior art reference does not meet all the words of a claim, it can not anticipate the claim.

Claims 3 - 5 and 7 - 9 are allowable for the same reasons as claim 1 and further on their own accord.

With respect to the rejection of claims 1, 2, 7 - 10, 15, and 18 as being anticipated by U.S. Patent No. 6,320,094 to Arnold, this rejection is no longer viable in view of the amendments to claims 1, 10, and 18. Arnold is also directed to an eye patch which completely covers the user's eye and prevents vision in any direction. Further, the Arnold eye patch is not positioned beneath the eye. Rather, it is positioned over the eye.

Claim 1 is allowable over Arnold for the same reasons that it is allowable over Morgan et al. Arnold suffers from the same deficiencies.

With respect to the Examiner's contention that because Arnold's eye patch may have the same thickness as disclosed by applicant, it is reasonable to consider Arnold's eye patch as inherently being capable of performing applicant's vision-interference function recited in claims 1 and 10, Applicant submits that the Examiner has drawn the wrong conclusion. Despite its thickness, the fact remains that Arnold completely blocks the vision of the eye over which it is placed. Thus, it is incapable of performing the vision-interference function in the manner set forth in the claim. The material in Arnold is incapable of allowing a user to look forward and up without blocking the user's vision.

Claim 10 clearly says "each said member being adhesively applied to one of the cheeks under an eye of said individual without covering any portion of said eye and without interfering with the individual's ability to see in upward and forward directions." For the reasons expressed above, Arnold clearly does not teach or suggest such a member. Therefore, it can not anticipate the subject matter of amended claim 10.

Claim 10 is further allowable because Arnold does not have a piece of material with an upper edge positioned beneath the eye. The upper edge of Arnold's eye patch is located above the eye.

Claim 18 calls for the method step of "positioning said at least one member on at least one cheek under an eye of said individual in a position where said upper edge is beneath the eye

and which does not cover any portion of said eye so that said thickness interferes with the individual's ability to look downwardly at a sports object being controlled by the individual and to restrict said individual's field of vision to looking forward and up towards a field of play and at least one person on said field of play." Arnold does not teach or suggest such a method step. Clearly, the Arnold eye patch covers a user's eye and therefore completely restricts the individual's field of vision so that the individual can not look forward and up towards a field of play and at least one person said field of play. A person wearing the Arnold device has his/her vision completely obstructed. For these reasons, Arnold can not anticipate the subject matter of amended claim 18.

Claims 2, 7 - 9 and 15 are allowable for the same reasons as their parent claims as well as on their own accord.

With respect to the rejection of claims 3 - 6, 11 - 14, 16, and 17 on obviousness grounds, these claims are allowable for the same reasons as their parent claims as well as on their own accord.

Claims 19 - 22 are allowable for the same reasons as claim 1, as well as on their own accord. None of the cited and applied references teaches or suggests the subject matter of claims 21 and 22. With regard to the Examiner's contention that the limitations in claims 21 and 22 are intended use, the Examiner is simply wrong. These limitations are specifically related to the structure of the piece of material, i.e. its thickness, and its positioning relative

to the eye. It is simply wrong for the Examiner to ignore these facts.

With regard to the rejection of claim 18 over the combination of Micchia in view of Arnold, the Board of Appeals has determined that Micchia does not teach or suggest the sufficient thickness limitation. To raise the contention that it does is to completely ignore the Board's decision which is not within the Examiner's purview. The Examiner is bound by the Board's determination on this issue. As noted above, Arnold is directed to an eye patch which completely blocks the vision of the eye over which it is placed. Thus, Arnold is incapable of teaching the claimed sufficient thickness limitation. Thus, even if one of ordinary skill in the art were to combine the references in the manner suggested by the Examiner, they still would not arrive at the subject matter of claim 18. The rejection also fails because the Examiner has not pointed out where the references teach or suggests the *method steps* set forth in claim 18.

For the foregoing reasons, the instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, she is hereby invited to contact Applicant's attorney at the telephone number listed below.

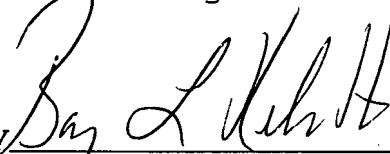
Entry of the instant amendment is proper because it clearly places the case in condition for allowance. No further search and/or consideration is required by the Examiner. Still further, the amendments do not raise any issue of new matter.

A notice of appeal is appended hereto in the event that the Examiner maintains the rejections of record.

No fee is believed to be due as a result of this response. Should the Director determine that an additional fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Respectfully submitted,

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By _____

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I, Karen M. Gill, hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on June 6, 2007.

